

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

TYRONE NOEL NUNN,

Case No. 3:23-cv-00465-MMD-CLB

Plaintiff,

ORDER

v.

DISTRICT OF NEVADA, *et al.*,

Defendants.

This is one of numerous civil-rights actions under 42 U.S.C. § 1983 that *pro se* Plaintiff Tyrone Noel Nunn, an inmate in the custody of the Nevada Department of Corrections, has filed since September 2023. On October 10, 2023, this Court ordered Nunn to submit a complaint and either pay the full \$402 filing fee for a civil action or file a complete application to proceed *in forma pauperis* (“IFP”) on or before December 11, 2023. (ECF No. 3). Before that deadline expired, Nunn filed a document titled “Initiation of Action” that is a collection of handwritten statutes, a vague “affidavit” about exhaustion of administrative remedies, an *ex parte* motion for the appointment of counsel, prison classification papers, documents from one of Nunn’s state criminal cases, an incomplete IFP application, and a proposed summons. (ECF Nos. 4, 5). For the reasons discussed below, the Court denies Nunn’s motion for appointment of counsel and grants him a final extension of time to file a complaint and either pay the full \$402 filing fee or file a completed financial certificate on this Court’s approved form.

I. DISCUSSION

A. Nunn must file a non-duplicative complaint.

“A civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P. 3. Generally, a complaint must contain “a short and plain statement of the claim showing that the [plaintiff] is entitled to relief” and “a demand for the relief sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8. “A civil-rights

1 complaint filed by a person who is not represented by an attorney must be submitted on
 2 the form provided by this court or must be legible and contain substantially all the
 3 information called for by the court's form." Nev. Loc. R. LSR 2-1. And the complaint must
 4 be signed personally by the unrepresented party. Fed. R. Civ. P. 11(a).

5 None of the documents that Nunn filed constitute a complaint. For instance, no
 6 document identifies the persons or entities to be sued, contains a short and plain
 7 statement of the claim showing that Nunn is entitled to relief, states the relief that Nunn
 8 seeks, and is personally signed by Nunn. Nunn might be attempting to state claims about
 9 his classification status and proceedings based on charges that he battered a corrections
 10 officer. (See ECF No. 4 at 21–27). The Court notes, however, that Nunn filed the same
 11 collection of documents in at least 18 of his other civil-rights actions. (See *id.* at 2). Nunn
 12 is cautioned that "[p]laintiffs generally have 'no right to maintain two separate actions
 13 involving the same subject matter at the same time in the same court and against the
 14 same defendant.'" *Adams v. Cal. Dept. of Health Servs.*, 487 F.3d 684, 688 (9th Cir.
 15 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008), (quoting
 16 *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977)). And duplicative litigation by a
 17 litigant who is proceeding under IFP status can be dismissed as malicious and thus
 18 constitute a strike under the Prison Litigation Reform Act, 28 U.S.C. § 1915. See *Cato v.*
 19 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The Court grants Nunn a final
 20 extension of time to file a complaint that complies with these rules.

21 **B. Nunn must either pay the \$402 filing fee or file a financial certificate.**

22 The United States District Court for the District of Nevada must collect filing fees
 23 from parties initiating civil actions. 28 U.S.C. § 1914(a). The fee for filing a civil-rights
 24 action is \$402, which includes the \$350 filing fee and the \$52 administrative fee. See *id.*
 25 at § 1914(b). "Any person who is unable to prepay the fees in a civil case may apply to
 26 the court for leave to proceed in forma pauperis." Nev. Loc. R. LSR 1-1. For an inmate to
 27 apply for in forma pauperis status, the inmate must submit **all three** of the following
 28 documents to the Court: (1) a completed **Application to Proceed in Forma Pauperis**

1 **for Inmate**, which is pages 1–3 of the Court’s approved form, that is properly signed by
 2 the inmate twice on page 3; (2) a completed **Financial Certificate**, which is page 4 of the
 3 Court’s approved form, that is properly signed by both the inmate and a prison or jail
 4 official; and (3) a copy of the **inmate’s prison or jail trust fund account statement for**
 5 **the previous six-month period**. See 28 U.S.C. § 1915(a)(1)–(2); Nev. Loc. R. LSR 1-2.
 6 In forma pauperis status does not relieve an inmate of his or her obligation to pay the
 7 filing fee, it just means that the inmate can pay the fee in installments. See 28 U.S.C.
 8 § 1915(b).

9 Nunn’s IFP application is incomplete because he did not submit a financial
 10 certificate on this Court’s approved form. (See ECF No. 5 at 4). Rather, Nunn submitted
 11 a financial certificate that purports to be for state court. (*Id.*) The Court grants Nunn a final
 12 extension of time to either pay the full \$402 filing fee or file a completed financial certificate
 13 on this Court’s approved form.

14 **C. The motion for appointment of counsel is denied without prejudice.**

15 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C.
 16 § 1983 civil-rights actions. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).
 17 Under 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any
 18 person unable to afford counsel.” However, the court will appoint counsel for indigent civil
 19 litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th
 20 Cir. 2009). “When determining whether exceptional circumstances exist, a court must
 21 consider the likelihood of success on the merits as well as the ability of the petitioner to
 22 articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Id.*
 23 (quotation omitted). “Neither of these considerations is dispositive and instead must be
 24 viewed together.” *Id.*

25 Nunn moves the Court to find and appoint him a free attorney, arguing that the
 26 issues in this action are complex. (ECF No. 4 at 22). The Court finds that exceptional
 27 circumstances warranting the appointment of counsel do not currently exist. Nunn has
 28

1 neither filed a complaint nor settled the matter of the filing fee. The motion for appointment
2 of counsel is therefore denied without prejudice.

3 **II. CONCLUSION**

4 For the foregoing reasons, it is ordered that the motion for appointment of counsel
5 (ECF No. 4) is denied without prejudice.

6 It is further ordered that, **on or before Friday, February 2, 2024**, Nunn will either
7 pay the full \$402 filing fee or file a completed financial certificate on this Court's approved
8 form that is signed both by the inmate and the prison or jail official.

9 It is further ordered that, **on or before Friday, February 2, 2024**, Nunn will submit
10 a complaint to this Court.

11 Nunn is cautioned that this action will be subject to dismissal without prejudice if
12 he fails to timely comply with this order. A dismissal without prejudice allows Nunn to refile
13 the case with the Court, under a new case number, when he can file a complaint and
14 either pay the required filing fee or file a complete application to proceed in forma
15 pauperis.

16 It is further ordered that the Clerk of the Court will send Plaintiff Tyrone Noel Nunn
17 the approved form for filing a 42 U.S.C. § 1983 complaint and instructions for the same
18 and the approved form application to proceed *in forma pauperis* for an inmate and
19 instructions for the same.

20 DATED: January 2, 2024.

21 
22 _____
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28